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In the Matter of)	
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RCN Corporation's Request for Waiver of)	CS Docket No. 97-80
47 C.F.R. § 76.1204(a)(1))	CSR-7113-Z
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Pursuant to 47 C.F.R. § 76.7(c), RCN Corporation (“RCN”) hereby submits this reply to the comments filed in response to its Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (“Petition”).¹ For the reasons set forth in its Petition and the Supplement thereto,² RCN clearly demonstrated that its waiver request meets the criteria set forth in Section 629 of the Communications Act, as well as the general waiver provisions in Sections 1.3 and 76.7 of the Commission’s Rules, and the standards for waiver set forth in the orders released by the Media Bureau on January 10, 2007, in connection with similar waiver requests.³ Only two sets of comments were filed in connection with RCN’s Petition, and one of those supported RCN’s request for a limited waiver. For the reasons set forth herein, the single opposing filing did not

³ E.g. *In the Matter of Comcast Corporation*, Memorandum Opinion and Order, CSR-7012-Z, CS Docket No. 97-80 (January 10, 2007) (“*Comcast Waiver Order*”); *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband*, Memorandum Opinion and Order, CS Docket 97-80, CSR-7057-Z (January 10, 2007) (“*BendBroadband Waiver Order*”).

raise any argument justifying denial of the waiver request. Accordingly, RCN urges the Commission to promptly grant the Petition.

BACKGROUND

RCN's Waiver is Limited in Scope and Duration

RCN's waiver request is narrowly limited in both scope and duration. Importantly, RCN does not seek a waiver for every set top box that it deploys, nor does it seek a waiver of unlimited duration. Instead, RCN seeks a waiver only for a single set top box – the Motorola DCT-700. This is the lowest-cost, most limited-capability digital set-top box ("STB") that RCN deploys. It is very popular with customers who want only a basic box to obtain basic digital features such as parental controls, interactive channel guides and video-on-demand ("VOD") programs like PBS Kids programming, and other interactive capabilities, but who do not want (and will not pay for) fully featured boxes with digital video storage and recording, high definition, simultaneous multiple channel tuning, and other advanced functions and features.

Moreover, RCN's request is for a waiver of short duration. Although as a small, competitive operator, RCN will not be the driving factor in development and deployment of new downloadable security technology and equipment, RCN believes that the industry is working toward completing that solution by 2009, and therefore limits its request to a waiver only until 2009, by which time RCN believes that downloadable conditional access ("DCA") technology will have become available⁴ or that there may be other equipment on the market that will provide consumers with a low cost option to buy only the features and functions that they want and need.

⁴ RCN is not a member of Cable Labs and has no first-hand knowledge about the development of DCA, but understands that the estimated timeframe for DCA is 2009. As CEA recognizes in its Comments (CEA Comments at 2), as a small cable operator, RCN is not able to drive the development process and product decisions of equipment manufacturers and large multi-system operators. In the interest of seeking as limited a waiver as reasonably possible, RCN therefore seeks a waiver until 2009 based on the estimates that it has heard. RCN does so without prejudice to seeking an extension of the waiver if circumstances warrant it in 2009.

Denial of the Waiver will “Displace a Low Cost Option” for RCN Subscribers

The public interest in affording consumers a choice to purchase only the cable services and equipment that they want or need clearly supports the requested waiver. As the Commission noted in its 2005 Extension Order, Section 629 is aimed at promoting consumer choice, but in implementing that Section, it is important that any effort to “achiev[e] consumer choice by establishing a competitive market should not displace a low-cost set-top box option for MVPD subscribers.”⁵ Allowing the integration ban to preclude access by RCN subscribers to the Motorola DCT-700 would have exactly that effect. It is undisputed that there is no comparably priced set top box on the market today, either by RCN or by consumers at retail outlets, which means that, absent a waiver, consumers will pay nearly three times⁶ what they pay today for the box needed to obtain those services.⁷

A Waiver is Essential for Subscriber Migration to “All Digital” Throughout Their Homes

As described in RCN’s Supplement, the DCT-700 forms the backbone of RCN’s efforts to convert its analog customers to fully digital services. RCN must convince subscribers to deploy STBs at all subscriber televisions in order to transition to a fully digital network, and the

⁵ *In re Implementation of Section 304 of the Telecommunications Act of 1996*, Second Report and Order, CS Docket No. 97-80, at ¶ 37 (Mar. 17, 2005) (“2005 Extension Order”).

⁶ Each DCT-700 currently costs RCN \$71.00. If that box becomes unavailable on July 1, 2007, the least expensive replacement box compatible with RCN’s network will cost RCN \$209.00 based on the most recent pricing available – almost three times more – and no other compatible boxes are expected to come on the market either before or after the July 1 deadline at anywhere close to the current \$71.00 price point. *See Supplement* at 2.

⁷ An increase in the cost of the box is not the only burden that our subscribers would bear. RCN would also be required to raise the deposit amount that it must collect from subscribers to reflect the fact that a \$209 box, and not a \$71 box is being secured. A proportionate increase in that deposit to reflect the increased cost of the box to RCN would mean that we would need a deposit of \$147 per box from subscribers who do not provide a credit card or bank account number to secure the rental. Overall, this would affect approximately 16% of our subscribers who pay a cash deposit. As a result, the affect of the increase would be felt disproportionately by the customers who can least afford it. Moreover, *a la carte* subscribers to our MiVision service and to new international *a la carte* packages that we want to develop would be even more adversely impacted. For example, the percentage of MiVision subscribers who pay a cash deposit today is approximately 40%. Certainly, this increase would clearly be a barrier to the ability of many customers to subscribe to the *a la carte* service.

critical factor that will affect RCN's success is the cost to the consumer. RCN needs to convince its subscribers to deploy STBs at all of their television sets so that it can reduce its analog programming in order to free up digital capacity. This is critical to deployment of additional high definition programming, since every on analog channel equates to roughly 10 digital channels or 2 HD channels using existing compression technology.

A Waiver is Essential to the Development and Introduction of Important New Services

The DCT-700 is also essential to RCN's development of new *a la carte* programming similar to the "MiVision" Hispanic *a la carte* service packages that RCN introduced last Fall.⁸ Given the reasonable price at which the *a la carte* MiVision packages are offered, a tripling of the STB cost would have a significant impact on the overall cost of this service and therefore on the success of this launch or any similar future programming. Thus, if the DCT-700 becomes unavailable as of July 1, 2007, customers who want and use only the most minimal features and functions of STBs will suffer a huge and disproportionate increase in their cost of service because no manufacturer has committed to developing a CableCARD-enabled STB with similar functionality as the DCT-700 for a comparable price.

DISCUSSION

Only one party – the Consumer Electronic Association ("CEA") – filed an opposition to RCN's waiver request.⁹ CEA completely ignores the real world consumer effect of the integration ban on RCN's subscribers when it states that "[c]onsumers have now waited eleven years ... for a robust market in navigation devices" and implies that a "robust market" for

⁸ *Supplement* at 3-4. As noted in the *Supplement*, the Mi Vision packages are all available with the purchase of only the basic tier of service.

⁹ Consumer Electronics Association Comments, CSR-7113-Z, CS Docket No. 97-80 (March 5, 2007) ("*CEA Comments*").

navigation devices will exist if the waiver is denied. (CEA Comments at 2.) Absent a waiver, no market whatsoever – robust or otherwise – will exist at all for low cost devices since there will be no such devices on the market. The simple, unequivocal fact is that denial of the waiver will eliminate a choice by subscribers who only want to pay for a simple, basic STB. Instead, they will need to pay nearly 3 times more for a device that gives them no greater features or functions. The inexpensive, minimally featured DCT-700 has been very popular with RCN's subscribers, and while CEA clearly wants its members to sell more expensive devices, its premise that taking away the choice of a low cost device is somehow going to increase consumer options is flatly incomprehensible.

The bottom line is that other than Motorola, Pace and Cisco, CEA's members have not developed – and CEA makes no claim that they have any intention to develop – a low cost STB. This may be because it is undisputable that the CableCARD requirement substantially adds to the cost of STBs – as Motorola noted in its Comments, in addition to the cost of the CableCARD itself, a larger chassis, an enhanced power supply and a redesign of the motherboard are needed to accommodate the CableCARD and add cost to the device.¹⁰ Consequently, modification of a STB to add a CableCARD significantly increases the overall cost of the STB and, when applied to a \$71.00 basic box, disproportionately affects the price such that the replacement box is triple the cost. This, in turn, disproportionately affects subscribers who want an STB with minimal features and functions.

CEA apparently believes that the Commission should mandate implementation of CableCARD-enabled STBs at any cost and without regard to the fact that doing so will not increase competitive options for consumers in any way whatsoever. CEA wants the Commission

¹⁰ Motorola, Inc. Comments, CSR-7113-Z, CS Docket No. 97-80, at 4 (March 5, 2007) (“*Motorola Comments*”).

to do what the Commission specifically said in 2005 that it would not do – displace a low-cost set-top box option for MVPD subscribers – and worse, would do it without any corresponding increase in competition for STBs. Today, RCN subscribers have the option of obtaining a low cost STB or a fully featured STB depending upon their wants, needs and resources. The only “option” that would exist if the waiver is denied is for consumers to decide whether to pay considerably more for an STB or go without the benefits of digital services such as parental controls, interactive program guides, VOD programming, or the “MiVision” Hispanic *a la carte* service. As a competitive provider, RCN has long tried to lower cable prices and increase consumer options, and while denial of a waiver may benefit certain consumer electronics companies, it would not in any way increase consumer choice and is therefore antithetical to competition.

One of the competitive efforts that RCN has made is to accept the challenge of members of Congress and the Commission to try to develop, within the constraints imposed by programmers, smaller packages of programming that enable consumers to purchase only the programming that they particularly want. A waiver is analogous to this goal, since it would enable consumers to retain the choice of purchasing an inexpensive, minimally featured STB or buying one that has additional features and functions at a higher price. Absent a waiver, consumers would be given only the choice of buying an expensive but minimally featured STB, or an even more expensive box with features and functions that they may not want or need.

Indeed, eliminating this choice will also have a chilling effect on RCN’s ability to develop and implement additional packages of *a la carte* programming similar to the “MiVision” Hispanic *a la carte* programming packages it introduced last Fall. The Commission has expressed an interest in furthering the ability for consumers to purchase programming they want

without having to purchase large tiers of programming they do not want. However, if a waiver is not granted, the STB price increase would have a disastrous effect on the success of RCN's new "MiVision" *a la carte* programming.¹¹ Furthermore, denial of a waiver will require RCN to halt its efforts to develop other specially targeted programming and packages that are available on an *a la carte* basis to its subscribers.¹²

In addition, contrary to CEA's assertions, a waiver is necessary to transition subscribers to digital services so that RCN can introduce new or improved services. Not only is it critical for RCN's *a la carte* programming packages, but also to freeing up channel capacity critical to the introduction of more HD channels. RCN has had success in building a subscribership to digital services, but the fact that RCN already provides some digital services does not preclude granting a waiver. As noted, RCN must convince most of its customers that currently have one STB in a home with multiple televisions to pay for additional STBs at secondary or tertiary televisions, which many would be unwilling to do so if a new STB cannot be leased for the same price as the

¹¹ See *Supplement* at 4 (demonstrating the cost-sensitivity of the "MiVision" subscribers); see also n. 7 *supra*, demonstrating that the increase in the price of the STB is only one component of the price increase, and that the corresponding increase in the amount of deposit paid by customers would greatly exacerbate the chilling effect on the economic viability of *a la carte* services.

¹² In its *Comcast Waiver Order*, the Media Bureau recognized that the introduction of specialty tiers such as RCN's MiVision are economically unproven and that a waiver may be appropriate in order to promote such new tiers. *Comcast Waiver Order* at 14-15. However, the Bureau went on to say that such a waiver would not be for a particular box but instead for only those subscribers who purchase such tiers. RCN respectfully submits that if a waiver were limited in such fashion, it would essentially have the same chilling effect on the development of tiered *a la carte* offerings as an outright denial of the waiver. *Id.* at 15. Such a distinction would impose additional administrative costs on RCN to maintain two separate inventories, to implement marketing and customer service processes and procedures to deploy different boxes to different customers and deal with service changes, and to provide for technical support of different boxes. Moreover, it is doubtful that Motorola would continue to be able to provide DCT-700s for such a very limited universe of subscribers. As the Commission is aware, there are huge impediments and costs to *a la carte* programming imposed by programmers, and as the Media Bureau recognized and RCN's MiVision experience clearly confirms, the economics of such services are very marginal. RCN currently has additional international *a la carte* options on the drawing board that it is pursuing in order to differentiate itself in the market, but to impose additional administrative burdens on RCN by granting a limited waiver would clearly tip the scales against our ability to deploy such services. Moreover, RCN will not be able to pursue the major networks for permission to include them in additional *a la carte* packages, since to do so it must be able to deliver on the product immediately. This would require that a significant inventory of the low cost boxes be available to RCN – and of course such availability would not exist if the integration ban for the DCT-700 has been permitted to go into effect as planned.

existing box. If RCN can convince its subscribers to use STBs with all televisions, it will be able to reduce the number of analog channels and free capacity to introduce additional digital channels and services as it transitions to a fully digital network. A waiver denial will dramatically affect RCN's ability to expand and enhance digital services and will ultimately delay the transition to a fully digital network, which is a goal clearly supported by the Commission.¹³

Finally, a waiver is vital for RCN not only to accelerate its transition to a fully digital network and to offer innovative and consumer-oriented services like the "MiVision" *a la carte* programming, but also to compete more effectively against incumbent cable operators, large satellite providers, and new telco entrants, all of whom have market capitalization hundreds of times bigger than RCN.¹⁴ Even CEA is "sympathetic to the plight of smaller cable operators." The Commission has already granted a waiver for satellite operators,¹⁵ and is considering a waiver request filed by Verizon.¹⁶ As a competitive matter, it would be competitively disastrous if RCN's digital service rate structure were increased as a result of a government imposed cost disparity.

CONCLUSION

RCN's waiver request fully comports with the standards set forth in Section 629, Sections 1.3 and 76.7 of the Commission's Rules, the Commission's 2005 Extension Order, and the

¹³ *BendBroadband Waiver Order* at ¶10.

¹⁴ *Motorola Comments* at 3-4.

¹⁵ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, ¶¶ 64-65 (1996).

¹⁶ *In the Matter of Verizon Communications, Inc's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7042-Z, CS Docket 97-80 (August 8, 2006).

standards enunciated in the January 10 orders.¹⁷ Accordingly, the Commission should reject CEA's comments, which urge it to allow a government imposed rate increase for cable subscribers to go into effect on July 1, 2007, without any benefit to consumers in terms of offering increased features or functions in return for the increased rates that they will be required to pay. CEA fails to justify denial of the waiver and instead simply would have the Commission endorse higher prices for consumers, slowing the digital transition, and burdening small cable operators with higher costs that will reduce competition. For the foregoing reasons and those set forth in RCN's Petition and Supplement, RCN respectfully requests that the Commission grant its limited waiver of the integration ban.

Respectfully submitted,

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Dated: March 15, 2007

¹⁷ See n. 3 *supra*.

CERTIFICATE OF SERVICE

I, Danielle Burt, hereby certify that on March 15, 2007, I have caused copies of the foregoing Reply of RCN Corporation to be served via regular U.S. Mail on the following:

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